

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3 - - - - - X
4 CHRISTOPHER MCCROBIE,) 15CR202
5 individually and on behalf of
6 All others similarly situated
7 Plaintiffs
8 vs.

9
10 PALISADES ACQUISITION XVI, LLC;
11 ASTA FUNDING, INC.; HOUSLANGER
12 & ASSOCIATES, PLLC; and TODD
13 HOUSLANGER) August 12, 2021
14 Defendants. 12:00 p.m.

15 - - - - - X

16 **ORAL ARGUMENT**

17 **All parties appeared via Zoom for Government Platform**
18 **Transcribed from an Electronic Recording Device**

19
20 TRANSCRIPT OF PROCEEDINGS
21 BEFORE THE HONORABLE MICHAEL J. ROEMER
22 UNITED STATES MAGISTRATE JUDGE
23

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3 P R O C E E D I N G

14:11:36 4
14:15:38 5
14:15:38 6
14:34:57 7 MAGISTRATE JUDGE ROEMER: Go ahead, sir.

14:34:58 8 MR. BRUNO: It does say at the very last
14:35:01 9 line: "The current credit is the assignee to whom the
14:36:07 10 debt is owed. It's Palisades Acquisition, XVI, LLC, but
14:36:17 11 you have to kind of piece everything together to try and
14:36:20 12 figure out who the current creditor is. And it comes at
14:36:24 13 the same time as the G notice was mailed. And the
14:36:29 14 emphasis of the notice to judgment debtor really has to
14:36:33 15 do with what might be exempt; that social security might
14:36:41 16 be exempt; Social Security, public assistance might be
14:36:45 17 exempt; alimony or child support. All of that might be
14:36:52 18 exempt. The focus is not on, hey, there has been an
14:37:05 19 assignment and this is the person it's been assigned to.
14:37:07 20 The focus is entirely on what benefits, like black lung
14:37:13 21 benefits and real retirement benefits, might be exempt.
14:37:19 22 So to say that gives adequate notice to the least
14:37:26 23 sophisticated consumer, that would be a stretch.

14:37:43 24 Now, the concept to change attorney form,
14:37:45 25 that was interesting. That was not sent to our clients.

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14:37:50 2 That was merely filed with the Court. No notice was
14:37:53 3 given to our client. And I believe during the
14:37:56 4 deposition, Mr. Houslander testified that he didn't send
14:37:59 5 it because he didn't have to send it. So, someone would
14:38:03 6 actually have to go down to the court after their bank
14:38:06 7 account is already being executed on to find out there
14:38:09 8 is some document consent to change attorney. That is
14:38:13 9 what the defendants are somehow claiming gave notice of
14:38:16 10 an assignment to Palisades Acquisition XVI. It
14:38:25 11 wasn't -- like I said, it wasn't actually sent to our
14:38:28 12 client it was merely filed with the Court. Finally, the
14:38:31 13 income execution itself, again, the decision from Judge
14:38:39 14 Geraci, the *Lumfeld* decision, makes it clear that the
14:38:44 15 collection efforts, that the notice of assignment has to
14:38:48 16 come before the collection efforts. Once the execution
14:38:51 17 is already taking place it's too late the notice should
14:38:55 18 have come before that. Okay.

14:38:56 19 MAGISTRATE JUDGE ROEMER: And let's get back
14:38:58 20 to the -- this argument we're kind of having here is
14:39:02 21 like a summary judgment argument on whether or not there
14:39:05 22 is a case here or not, I guess. Let's get back to the
14:39:08 23 class certification. So, for each person in the class,
14:39:13 24 I guess, the Defendant will have to come up with a
14:39:16 25 notification, right? We notified them or they didn't

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14:39:20 2 notify them. I guess I don't see it that complicated.

14:39:23 3 Either they sent them the notice or didn't send them the

14:39:27 4 notice. They are arguing what to notice or not to

14:39:30 5 notice. The Court can decide that. That will be pretty

14:39:32 6 much the same for everybody, I guess. Am I missing

14:39:35 7 something?

14:39:36 8 MR. BROMBERG: No, no, that is our position,

14:39:38 9 your Honor.

14:39:39 10 MAGISTRATE JUDGE ROEMER: Okay. Mr. Bruno.

14:39:42 11 MR. BRUNO: Your Honor, going back to the

14:39:44 12 Rule 23 motion, okay. The argument on the notice, first

14:39:47 13 of all the document, the documents are clear, they speak

14:39:51 14 for themselves. They are written in plain English.

14:39:54 15 MAGISTRATE JUDGE ROEMER: Yeah, I don't

14:39:54 16 think so. I would tend to disagree with you on that.

14:39:58 17 MR. BRUNO: To suggest --

14:39:59 18 MAGISTRATE JUDGE ROEMER: You never sent out

14:40:00 19 a document on that form to that. Mr. Bromberg was

14:40:06 20 talking about notification of assignment right up in

14:40:09 21 front in English. You never did that.

14:40:11 22 MR. BRUNO: No, we didn't. And the

14:40:12 23 obligation to do so isn't on the assignee, and,

14:40:16 24 essentially, wasn't on the assignee's counsel; it is on

14:40:20 25 the assignor.

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14:40:22 2 MAGISTRATE JUDGE ROEMER: I don't know who
14:40:22 3 it's on, but from the debtor's standpoint, they never
14:40:26 4 got the notice, so, technically, they don't have to pay
14:40:30 5 the debt. That is what has to happen.

14:40:32 6 MR. BRUNO: No, the Buffalo City Court
14:40:34 7 already validated this; this has been adjudicated.

14:40:37 8 MAGISTRATE JUDGE ROEMER: I'm not buying
14:40:38 9 that, Mr. Bruno.

14:40:39 10 MR. BRUNO: Let's go to commonality, your
14:40:42 11 Honor. We would have to have individual inquiries as to
14:40:46 12 every debtor and what notice they received, how it was
14:40:49 13 delivered to them --

14:40:50 14 MAGISTRATE JUDGE ROEMER: You either sent
14:40:51 15 them a notice --

14:40:52 16 MR. BRUNO: -- and when it was.

14:40:53 17 MAGISTRATE JUDGE ROEMER: You sent them a
14:40:55 18 notice.

14:40:55 19 MR. BRUNO: That would require
14:40:56 20 individualized inquiries and adjudications, your Honor.
14:41:01 21 So for the purposes of Rule 23 --

14:41:03 22 MAGISTRATE JUDGE ROEMER: I don't see that,
14:41:05 23 either. You're making this argument how the Plaintiff
14:41:07 24 here got notice. I can't imagine there would be too
14:41:14 25 many iterations of that argument. The Court will decide

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14:41:16 2 that as a matter of law whether or not it constituted a
14:41:18 3 sufficient notice or it didn't. I don't know why there
14:41:23 4 would have to be all these different things. I mean I
14:41:29 5 think it's pretty clear you didn't send this notice.
14:41:31 6 I'm having trouble understanding your arguments about
14:41:34 7 how that was a sufficient notice.

14:41:36 8 MR. BRUNO: Well, your Honor, you know, I'll
14:41:39 9 rely on the papers, but the law is clear that it's not
14:41:44 10 on the part of the assignee.

14:41:45 11 MAGISTRATE JUDGE ROEMER: Thank you, sir.
14:41:46 12 You can rely on the papers.

14:41:47 13 MR. BRUNO: No, not on that.

14:41:49 14 MAGISTRATE JUDGE ROEMER: No, that is what
14:41:50 15 you said, sir.

14:41:51 16 MR. BRUNO: On that one issue, your Honor.
14:41:54 17 We're just addressing the notice.

14:41:56 18 MAGISTRATE JUDGE ROEMER: What else do you
14:41:56 19 want to talk about? What other issue do you want to
14:41:59 20 talk about?

14:42:00 21 MR. BRUNO: It's Mr. Bromberg's motion,
14:42:00 22 Judge.

14:42:03 23 MAGISTRATE JUDGE ROEMER: So you're done.

14:42:04 24 Anybody else for the Defendants want to
14:42:06 25 speak?

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14:42:07 2 MR. WORTMAN: Yeah, your Honor. This is
14:42:08 3 Scott Wortman. Sorry about the technical difficulties
14:42:12 4 before. I thought I would come into the office to make
14:42:14 5 things easier, and, instead, it actually complicated
14:42:18 6 things. I do apologize about that.

14:42:20 7 We represent the defendants Palisade
14:42:26 8 Acquisition XVI. And, as an initial matter, listening
14:42:28 9 to the arguments, a purely procedural question over the
14:42:33 10 interpretation of the CPLR, the Civil Practice Laws and
14:42:39 11 Rules of New York, is insufficient to establish Article
14:42:43 12 III standing. It certainly is not enough to show
14:42:46 13 injury, especially here where the state court has
14:42:49 14 already.

14:42:50 15 MAGISTRATE JUDGE ROEMER: You're making an
14:42:51 16 argument now there is no standing for the entire case,
14:42:55 17 the whole case should be tossed? That is in your
14:42:57 18 papers?

14:42:57 19 MR. WORTMAN: Yes.

14:42:59 20 MAGISTRATE JUDGE ROEMER: That is in the
14:43:00 21 papers?

14:43:01 22 MR. WORTMAN: It's in the papers, yes.

14:43:03 23 MAGISTRATE JUDGE ROEMER: That is not even a
14:43:04 24 class argument, that this is to be dismissed for lack of
14:43:08 25 subject matter jurisdiction.

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14:43:09 2 MR. WORTMAN: Well, it is, but an argument
14:43:12 3 that is properly raised at the time of class.

14:43:17 4 MAGISTRATE JUDGE ROEMER: Well, subject
14:43:17 5 matter jurisdiction can be raised at any time.

14:43:20 6 MR. WORTMAN: That's correct. And the
14:43:22 7 Supreme Court --

14:43:22 8 MAGISTRATE JUDGE ROEMER: That is your
14:43:23 9 argument, subject matter jurisdiction?

14:43:25 10 MR. WORTMAN: Subject matter jurisdiction,
14:43:28 11 yes, prior to citing the merits of class certification.

14:43:36 12 MAGISTRATE JUDGE ROEMER: It goes to the
14:43:37 13 whole case. Either I have jurisdiction or I don't have
14:43:40 14 jurisdiction, right? The Court doesn't have anything to
14:43:42 15 do with the class certification, you're making a
14:43:46 16 different argument.

14:43:46 17 MR. WORTMAN: No, as part of class
14:43:48 18 certification, we humbly submit, the Court should
14:43:53 19 analyze whether or not McCrobie suffered or can
14:44:07 20 demonstrate any concrete harm, especially when it's
14:44:11 21 already been established, as matter of law, by the
14:44:14 22 Buffalo City Court that no such harm was suffered. Here
14:44:18 23 the Plaintiff is asking the Court to rely on a concept
14:44:21 24 of hypothetical jurisdiction. That was already soundly
14:44:27 25 rejected by the Supreme Court. And as we said, the

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14:44:30 2 Court always has the authority to determine
14:44:32 3 jurisdiction.

14:44:33 4 MAGISTRATE JUDGE ROEMER: You know, we're
14:44:34 5 six years into this case, we've already had motions to
14:44:37 6 dismiss, it went up to the Second Circuit, I believe and
14:44:40 7 came back and this is the first time, there is a subject
14:44:44 8 matter jurisdiction.

14:44:45 9 MR. WORTMAN: This is not the first time,
14:44:47 10 but this is the first time since the *Ramirez* decision
14:44:51 11 decided by the Supreme Court just a couple of weeks ago
14:44:54 12 where they were very clear that a purely procedural
14:44:58 13 question over interpretation, such as the CPLR, is
14:45:01 14 insufficient to establish Article III standing as
14:45:05 15 concisely put in the *Ramirez* decision no concrete harm,
14:45:08 16 no standing. And here the record unequivocally
14:45:13 17 demonstrates that McCrobie did not suffer a concrete
14:45:16 18 harm traceable to any of the Defendant's conduct.
14:45:19 19 Plaintiff himself --

14:45:20 20 MAGISTRATE JUDGE ROEMER: Well, the whole
14:45:21 21 purpose behind the statute is to give him notice that
14:45:25 22 the debt was assigned so he would know what he was
14:45:28 23 supposed to do. Here you went ahead and got the default
14:45:31 24 judgment, never letting him know it was assigned to
14:45:34 25 another person.

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14:45:35 2 MR. WORTMAN: Your Honor, the statute -- I'm
14:45:37 3 sorry, but I respectfully disagree.

14:45:40 4 MAGISTRATE JUDGE ROEMER: The statute
14:45:40 5 doesn't say you have to give notification of assignment?

14:45:44 6 MR. WORTMAN: Actually, it says the
14:45:46 7 assignor. The assignor must give notification, not the
14:45:50 8 assignee. We represent the assignee and the Buffalo
14:45:53 9 City Court already looked at this issue and found that
14:45:56 10 the execution of the judgments, all of this was in front
14:45:57 11 of the Buffalo City Court and --

14:45:59 12 MAGISTRATE JUDGE ROEMER: Did the Buffalo
14:46:01 13 City Court issue a written decision?

14:46:03 14 MR. WORTMAN: A written decision, yes.

14:46:05 15 MAGISTRATE JUDGE ROEMER: Mr. Bromberg.

14:46:06 16 MR. BROMBERG: Okay. Your Honor, first of
14:46:08 17 all, with respect to the Article III standing issue, the
14:46:12 18 defendants took \$572.45 from our clients. They
14:46:18 19 eventually returned it to our client, but they never
14:46:22 20 compensated him for the period when he used on the -- -
14:46:31 21 that was Palisades and Asta and Houslanger and
14:46:34 22 Houslanger & Associates taking that money. So he was
14:46:37 23 never compensated for the period when he didn't have
14:46:41 24 that money. Secondly, the defendants still continue to
14:46:44 25 claim that the Plaintiff owes the money to Palisades

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14:46:48 2 Acquisition XVI, LLC, and to Asta. So there is still an
14:46:52 3 ongoing claim that he owes the money to those fellows,
14:46:56 4 and that somehow there has been a proper notice of
14:47:01 5 assignment. It's something more than procedural. They
14:47:03 6 took the money and there was a period when our client
14:47:07 7 was denied the money and he was never compensated for
14:47:11 8 the period he was denied the money and they still claim
14:47:15 9 he owes them the money. With respect to the obligations
14:47:18 10 claiming that the obligations fall solely on the
14:47:20 11 assignor, there is a confidential section, I don't want
14:47:27 12 to complicate things for the Court, I could point the
14:47:30 13 Court to the section of the agreement, the purchase
14:47:33 14 agreements, purchase and sale agreement between Great
14:47:38 15 Seneca Financial Corporation, Platinum Financial
14:47:42 16 Services Corporation.

14:47:43 17 MAGISTRATE JUDGE ROEMER: Prior to the
14:47:44 18 assignment, was it the assignee that was supposed to
14:47:48 19 notify the debtor, is that what you're telling me?

14:47:51 20 MR. BROMBERG: Yes, exactly. Section 6.1
14:47:54 21 that has been marked "confidential," I want to make that
14:47:58 22 clear, I want to maintain the confidentiality. Yes,
14:48:01 23 section 6.1.

14:48:03 24 MAGISTRATE JUDGE ROEMER: That was in the
14:48:03 25 papers, I believe.

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14:48:05 2 MR. BROMBERG: That was in the papers, yes.

14:48:07 3 MAGISTRATE JUDGE ROEMER: Yes.

14:48:07 4 MR. BROMBERG: And there has been no
14:48:09 5 determination that the money is due to, from the state
14:48:13 6 court, that the money is due to Palisades XVI, LLC were
14:48:18 7 to ask that.

14:48:20 8 MAGISTRATE JUDGE ROEMER: Have you briefed
14:48:21 9 this issue regarding subject matter jurisdiction?

14:48:23 10 MR. BROMBERG: It was briefed in the papers
14:48:25 11 in passing. I could point to -- I mean, it was raised
14:48:30 12 for the first time in the opposition when, frankly, I
14:48:34 13 think it should have been the subject of a separate Rule
14:48:38 14 12 motion rather than being dealt with --

14:48:41 15 MAGISTRATE JUDGE ROEMER: That was the point
14:48:42 16 I was trying to make earlier. That is beyond whether or
14:48:45 17 not there should be a class. That is whether or not
14:48:47 18 there should be a case, I guess.

14:48:49 19 MR. BROMBERG: Yes, it's really not fair to
14:48:52 20 raise it in passing in a motion.

14:48:56 21 MAGISTRATE JUDGE ROEMER: But if it's an
14:48:56 22 issue, it's an issue. We can't keep jurisdiction over a
14:49:01 23 case we don't have subject matter jurisdiction over.

14:49:03 24 And counsel mentioned a case. What, the *Rodriguez* case?

14:49:07 25 MR. BROMBERG: *Ramirez*.

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14:49:09 2 MR. WORTMAN: Thank you, your Honor.

14:49:11 3 MAGISTRATE JUDGE ROEMER: That case. When
14:49:12 4 was that case decided?

14:49:13 5 MR. BROMBERG: About two weeks ago, your
14:49:13 6 Honor.

14:49:16 7 MAGISTRATE JUDGE ROEMER: So, I don't know
14:49:16 8 that anybody briefed that. All of the briefs were in
14:49:19 9 already or whatever.

14:49:22 10 MR. BROMBERG: We addressed the issues on
14:49:24 11 page 9 and 10 of our brief.

14:49:26 12 MAGISTRATE JUDGE ROEMER: Okay. I want you
14:49:27 13 to do a better job. I want you to really address the
14:49:31 14 issue of subject matter jurisdiction in detail, so I'm
14:49:34 15 going to give you two weeks to file a memorandum
14:49:39 16 regarding the subject matter jurisdiction. And I'll
14:49:43 17 give the defendants two weeks to respond.

14:49:45 18 Rosalie, what is the two weeks?

14:49:47 19 THE CLERK: August 26th.

14:49:51 20 MR. WORTMAN: Thank you, your Honor.

14:49:51 21 MR. BROMBERG: Your Honor, I'm just
14:49:53 22 wondering if it should be the other way around, that
14:49:55 23 they are the ones raising the issue.

14:49:57 24 MAGISTRATE JUDGE ROEMER: They say they
14:49:59 25 raised the issue already in their papers.

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14:50:01 2 MR. BROMBERG: Okay. We'll put in something
14:50:03 3 on *Ramirez*.

14:50:04 4 MAGISTRATE JUDGE ROEMER: Okay. All right.
14:50:05 5 And then the Defendant response, Rosalie.

14:50:08 6 THE CLERK: September 9th.

14:50:11 7 MAGISTRATE JUDGE ROEMER: September 9th.

14:50:13 8 MR. BRUNO: I apologize. Can you give me
14:50:14 9 the dates again? Sorry, ma'am.

14:50:16 10 THE CLERK: August 26th and September 9th.

14:50:19 11 MR. BRUNO: Thank you so much.

14:50:20 12 THE CLERK: You're welcome.

14:50:22 13 MAGISTRATE JUDGE ROEMER: I'll tell you
14:50:23 14 right now, if I have -- if the Court has subject matter
14:50:27 15 jurisdiction, I'm tending towards granting the motion
14:50:30 16 for class certification, just so everybody knows that.
14:50:33 17 So, do a good job on the subject matter jurisdiction
14:50:36 18 issue. All right? Anything else anybody wanted to say?

14:50:42 19 MR. BROMBERG: No, your Honor.

14:50:43 20 MAGISTRATE JUDGE ROEMER: Okay. Have a good
14:50:44 21 day. Stay safe.

14:50:46 22 MR. BROMBERG: Thank you, your Honor.

14:50:47 23 MR. BRUNO: Thank you, your Honor.

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
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S/ Karen J. Clark, RPR

Official Court Reporter